

State of South Dakota

EIGHTIETH SESSION LEGISLATIVE ASSEMBLY, 2005

466L0298

HOUSE BILL NO. 1106

Introduced by: Representatives Boomgarden, Cutler, Deadrick, Jerke, Michels, and Schafer
and Senators Olson (Ed), Abdallah, Broderick, Kooistra, and Nesselhuf

1 FOR AN ACT ENTITLED, An Act to revise the duties of certain licensed mental health
2 professionals with regard to certain insanity and guilty-but-mentally-ill proceedings.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 23A-10-4 be amended to read as follows:

5 23A-10-4. In an appropriate case a court shall, upon motion of a prosecuting attorney, order
6 the defendant to submit to a ~~psychiatric~~ mental health examination by a psychiatrist, licensed
7 psychologist, or licensed mental health professional certified by the National Board of Forensic
8 Evaluators, designated for this purpose by the prosecuting attorney in an order of the court. The
9 court may also appoint medical experts and require that the defendant submit ~~himself for~~ to
10 examination by such court-appointed medical experts. No statement made by an accused in the
11 course of any examination provided for by this section, whether the examination was with or
12 without the consent of the accused, ~~shall~~ may be admitted in evidence against ~~him~~ the defendant
13 on the issue of guilt in any criminal proceeding except for the purpose of impeaching the
14 defendant.

15 Section 2. That § 23A-10-7 be amended to read as follows:



23A-10-7. Subject to court approval, the defendant may be examined at an approved community health center by a psychiatrist, licensed psychologist, or licensed mental health professional certified by the National Board of Forensic Evaluators, of ~~his~~ the defendant's own choosing at ~~his~~ the defendant's own expense or, if indigent, at county expense. Examination of the defendant shall be on the issue of ~~his~~ the defendant's insanity when the offense occurred. Notice of the independent examination shall be given to the prosecuting attorney at least five days before the examination date. A psychiatrist, licensed psychologist, or licensed mental health professional certified by the National Board of Forensic Evaluators, who examines an indigent defendant may receive a reasonable fee.

Section 3. That § 23A-7-16 be amended to read as follows:

23A-7-16. In addition to the requirements of §§ 23A-7-4 and 23A-7-5, if a defendant charged with a felony pleads guilty but mentally ill, the court may not accept the plea until the defendant has been examined by a licensed psychiatrist, licensed psychologist, or licensed mental health professional certified by the National Board of Forensic Evaluators, and the court has examined the ~~psychiatric~~ mental health reports. The court shall hold a hearing on the defendant's mental condition; and if there is a factual basis on which the court can conclude that the defendant was mentally ill at the time of the offense, the plea shall be accepted.

Section 4. That § 23A-27-40 be amended to read as follows:

23A-27-40. If a defendant is found "guilty but mentally ill" and is placed on probation, the sentencing court, upon recommendation of a licensed psychiatrist, licensed psychologist, or licensed mental health professional certified by the National Board of Forensic Evaluators, shall make treatment a condition of probation. Reports as specified by the sentencing court shall be filed with the court service department and the sentencing court. The defendant's failure to continue treatment, except by agreement with the treating agency and the sentencing court, is

- 1 basis for commencing a probation revocation hearing and grounds for probation revocation.